

No. 42972-1-II

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

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CITY OF LAKEWOOD  
*Respondent,*

v.

DAVID KOENIG,  
*Appellant.*


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BRIEF OF APPELLANT

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## I. INTRODUCTION

This is a very strange case that raises important legal issues under the Public Records Act, Chap. 42.56 RCW (PRA).

The City of Lakewood brought this action against appellant David Koenig, purportedly to obtain a declaratory judgment that the City had complied with the PRA with respect to Koenig's requests for records. CP 5-6. The City asserts that it sued Koenig because he failed to "acknowledge in writing" that the City had complied with the PRA. CP 7. But the PRA does *not* allow an agency to demand that a requestor "acknowledge" that the agency's PRA response to a request complies with the PRA. On the contrary, the PRA clearly requires the agency to determine what specific exemptions are applicable to specific records, and to explain why such exemptions are applicable. RCW 42.56.210(3). Under the PRA, the burden of proving applicable exemptions is always on the agency, never on the requester. RCW 42.56.550(1)-(2).

At the very beginning of this case Koenig clearly stated that Koenig did not contest any of the City's redactions except for driver's license numbers. CP 17. Even though Koenig had narrowed the substantive issues to just one type of PRA redaction, the City made no attempt to obtain a judicial determination of whether the driver's license numbers were exempt. Instead, the City insisted on conducting

burdensome discovery that had absolutely nothing to do with the salient issue of whether the City had properly redacted driver's license numbers. This Court granted review and eventually quashed the City's effort to bludgeon Koenig with irrelevant discovery requests. *Lakewood v. Koenig*, 160 Wn. App. 883, 250 P.3d 113 (2011).

On remand, the City finally moved for summary judgment that driver's license numbers are exempt under the PRA. The City's motion revealed that the City had no idea whether driver's license numbers were exempt or why. The City failed to cite any specific statutory exemption for driver's license numbers. The City cited numerous inapplicable statutes, and made varied and inconsistent arguments about why it had redacted the driver's license numbers. CP 59-71.

In a cross-motion, Koenig explained that none of the City's claimed exemptions were applicable, and that the City had failed to carry its burden of proof under RCW 42.56.550. Koenig also explained that the City was liable for Koenig's attorney fees under *Sanders v. State*, 169 Wn.2d 827, 240 P.3d 120 (2010), because the City had failed to explain the application of specific exemptions to requested records as required by RCW 42.56.210(3). CP 107-134.

Nevertheless, the trial court granted the City's motion for summary judgment. Without citing any particular statute, the trial court erroneously

held that driver's license numbers are "exempt from disclosure as a matter of law." CP 229. When Koenig's counsel asked the trial court to state, on the record, why driver's license numbers were exempt, the court refused to do so. RP 9. The trial court also erroneously held, contrary to *Sanders, supra*, that the City's improper exemption claims did not render the City liable for attorney fees. CP 229.

Koenig has defended this case and appealed to this Court because an important principle is at stake. Under the PRA, **agencies** are supposed to know why records are exempt, and agencies are required to explain to requesters why records have been withheld or redacted. Agencies are *not* permitted to respond to PRA requests with unexplained or erroneous exemption claims and then sue requesters who refuse to perform the agencies' duties under the PRA.

The City's misguided effort to go on the offensive against a requester violates both the letter and the spirit of the PRA. The City sued Koenig without good cause, and it has caused Koenig to incur substantial attorney fees in defense of the rights of all PRA requesters. This Court must reverse the trial court's erroneous decision, and remand this matter to the trial court for an award of attorney fees to Koenig.



## **II. ASSIGNMENT OF ERROR**

**Assignment of Error:** The trial court erred in issuing the *Order on Cross-Motions for Summary Judgment* dated December 16, 2011. CP 228-230.

### **Issues Pertaining to Assignment of Error:**

A. Whether the City has explained why driver's license numbers are exempt under the PRA.

B. Whether the City is liable for attorney fees under RCW 42.56.550(4) and *Sanders, supra*, for failing to explain how specific exemptions apply to the requested records.

## **III. STATEMENT OF THE CASE**

### **A. Koenig's PRA Requests**

This case arises out of Koenig's request for public records relating to three incidents in Lakewood.<sup>1</sup> The first request related to the arrest and prosecution of a Lakewood police officer for patronizing a prostitute. The

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<sup>1</sup> These requests were made while another PRA case involving the same parties was pending in the superior court. *Koenig v. Lakewood*, Pierce Co. No. 06-2-14000-7. In that case the trial court found that the City committed numerous violations of the PRA, and awarded Koenig more than \$40,000 in attorney fees and penalties. CP 138-152. Koenig appealed to this Court, seeking to overturn the trial court's erroneous reliance on the interpretation of the Criminal Records Privacy Act, Chap. 10.97 RCW ("CRPA") in *Hudgens v. City of Renton*, 49 Wn. App. 842, 746 P.2d 320 (1988). CP 147. This Court affirmed in an unpublished opinion, holding that *Hudgens* was no longer an issue. CP 103. Koenig's legal position was eventually vindicated. In *Bainbridge Is. Police Guild v. City of Puyallup*, 172 Wn.2d 398, 259 P.3d 190, 201-02 (August 18, 2011), the Supreme Court abrogated *Hudgens* for the same reasons that Koenig had argued to this Court in *Koenig v. Lakewood*.

second request related to the arrest and prosecution of a Tacoma police officer for assault. The third request related to an accident in which a Fife police officer struck a pedestrian with his patrol car. CP 6, 59-60.

In its response, the City asserted that driver's license numbers were exempt for various reasons. In response to Koenig's first request the City asserted that the officer's driver's license number were redacted under "RCW 46.52.120 and RCW 46.52.130." CP 75. In response to the second PRA request, the City asserted that the officer's driver's license number was redacted pursuant to "RCW 42.56.050, 46.52.120 and 46.52.130." CP 76. In response to the third PRA request the City stated:

The City is making available the investigation about an auto accident that occurred in the City of Fife in November of 2006. The City has redacted the dates of birth, driver's license numbers and social security numbers of (1) the involved officer; (2) the alleged victim; and (3) the listed eyewitnesses. These redactions are made pursuant to RCW 42.56.050, RCW 42.56.240, RCW 46.52.120, and RCW 46.52.130.

CP 75-76.<sup>2</sup> In sum, the City redacted driver's license numbers pursuant to two sections of the PRA, RCW 42.56.050 and RCW 42.56.240, and two sections of Chapter 46.52 RCW (relating to accident reports).

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<sup>2</sup> The City's motion for summary judgment purported to quote this portion of the City's response. In fact, the City's quotation was false, deleting the statutes that the City actually relied on in its response, and adding citations to new statutes. CP 60; *see* section III (C) (below).

Copies of portions of the redacted records produced by the City (CP 160-169) are attached to this brief as an **Appendix**. In response to the first request, the City redacted the officer's driver's license number but not his name, address, phone number, or birth date. CP 160-163. In response to the second request the City redacted the driver's license numbers and birth dates of witnesses but not their names, addresses, or phone numbers. CP 164-168. In response to the third request the City redacted the officer's driver's license number but not his name or birth date. CP 169.

The City immediately threatened to take legal action against Koenig unless he notified the City in writing that the City's PRA responses were satisfactory. CP 77. Given the City's history of making erroneous exemption claims, there was no reason for Koenig to "acknowledge" that the City's numerous exemption claims were correct.

Koenig responded by questioning a number of the City's exemption claims. First, Koenig noted that in its earlier responses the City had asserted that driver's license numbers were exempt pursuant to the Driver's Privacy Protection Act of 1994, 18 USC § 2721 (DPPA), and *Reno v. Condon*, 528 U.S. 141 (2000), which the City had not cited in its current response. Koenig asked the City to clarify its response. CP 80. Second, Koenig objected that the City's citations to RCW 42.56.050 and RCW 42.56.240 were insufficient, that it was not clear which of five

subsections of RCW 42.56.240 the City intended to rely upon, and that, assuming the City meant to rely on subsection (1) of RCW 42.56.240, the City had not established that driver's license numbers were private for purposes of the PRA. CP 82. Third, Koenig questioned the City's reliance on RCW 46.52.120 and RCW 46.52.130, noting that those statutes did not allow the City to redact any information from documents other than driver's license abstracts, and that the City had redacted driver's license numbers from other types of documents (police reports, collision reports, and a court docket). CP 82.

In response, the City clarified that it also intended to rely on DPPA and *Reno v. Condon* as a basis for the redaction of driver's license numbers. CP 87. The City asserted that dates of birth were exempt under RCW 42.56.240(2) (information revealing the identity of witnesses) but did not attempt to explain why the driver's license numbers of police officers would be exempt under that subsection. CP 87-88. The City simply ignored Koenig's question regarding RCW 46.52.120, -.130. Instead, the City stated: "Given what should be the self-evident nature of redacting an individual's driver's license number, we decline your invitation to provide further and unnecessary explanation." CP 88.

**B. City's Lawsuit and Discovery Requests**

The City filed this action on March 5, 2008, and amended its

complaint on April 28, 2008. Two weeks later, the City submitted nine pages of burdensome, pointless discovery requests to Koenig. CP 170-178.

Koenig's *Answer*, filed on June 12, 2008, explained that the City was violating its duties under the PRA:

The City seems to believe that it is entitled to respond to public records requests with ambiguous, poorly-researched, erroneous or otherwise insufficient exemption claims and then demand that the requester perform time-consuming legal research to determine whether the City's exemption claims are correct. Koenig and other requesters have no obligation to perform such research or to tell the City whether it has made yet another erroneous exemption claim.

CP 16. Koenig's *Answer* specifically denied that the City had properly redacted driver's license numbers. CP 17.

Unsatisfied with Koenig's responses to the City's discovery requests, the City brought a motion to compel. Koenig responded with a motion for protective order. On December 5, 2008, the trial court ordered Koenig to answer the City's discovery requests. CP 19-20.

Koenig immediately sought interlocutory review of the trial court's discovery order. This Court granted review and stayed the order. On March 29, 2011, this Court reversed the discovery order in a published opinion, holding that the City's discovery requests were not reasonably

calculated to lead to the discovery of admissible evidence. *Lakewood*, 160 Wn. App. at 897. This Court issued its mandate on June 13, 2011.

**C. Summary Judgment Motions on Remand**

Almost five months after this Court issued its mandate the City finally moved for summary judgment on whether driver's license numbers are exempt under the PRA. The City's motion revealed that the City had no idea whether driver's license numbers were exempt or why. The City cited numerous inapplicable statutes, and made varied and inconsistent arguments about why it had redacted driver's license numbers. CP 59-71.

The City's motion purported to quote from the City's initial response dated November 30, 2007. But the City's quotation was patently false, deleting the statutes that the City actually relied on in that response, and adding citations to new statutes. The following shows the actual text of the City's response on November 30, 2007, with the creative revisions in the City's motion shown in double underlining and strikeout:

The City is making available the investigation about an auto accident that occurred in the City of Fife in November of 2006. The City has redacted the dates of birth, and driver's license numbers ~~and social security numbers~~ of (1) the involved officer; (2) the alleged victim; and (3) the listed eyewitnesses. These redactions are made pursuant to ~~RCW 42.56.050, RCW 42.56.240, RCW 46.52.120, and RCW 46.52.130~~ RCW 42.56.070.

*Compare* CP 75-76; *with* CP 60. This was not a mere misquotation by the City of the City's own response. The City's assertion that it redacted

driver's license numbers under "RCW 42.56.070" was an outright and quite remarkable fabrication. **The City had never cited that section of the PRA before.**

In a cross-motion, Koenig explained that none of the City's claimed exemptions were applicable, and that the City had failed to carry its burden of proof under RCW 42.56.550. Koenig also explained that the City was liable for Koenig's attorney fees under *Sanders*, 169 Wn.2d 827, because the City had failed to explain the application of specific exemptions to requested records as required by RCW 42.56.210(3). CP 107-134.

Nevertheless, the trial court granted the City's motion for summary judgment. Without citing any particular statute, the trial court erroneously held that driver's license numbers are "exempt from disclosure as a matter of law." CP 229. When Koenig's counsel asked the trial court to state, on the record, why driver's license numbers were exempt, the court refused to do so. RP 9. The trial court also erroneously held, contrary to *Sanders*, *supra*, that the City's improper exemption claims did not render the City liable for attorney fees. CP 229.

Koenig appealed. CP 231-234.

#### IV. ARGUMENT

This appeal presents two basic issues: (A) whether the City has complied with RCW 42.56.210(3) by explaining how specific PRA exemptions apply to the driver's license numbers, and (B) whether the City is liable for Koenig's attorney fees regardless of whether driver's license numbers are exempt. This Court's review on both of these issues is *de novo*. RCW 42.56.550(3); *Sanders*, 169 Wn.2d at 866.

**A. The City has failed to explain how the exemptions cited by the City apply to driver's license numbers.**

The PRA requires the City to produce all requested public records unless a record falls within a specific PRA exemption or other statute which exempts or prohibits disclosure of specific information or records. RCW 42.56.070(1); *Seattle Times v. Serko*, 170 Wn.2d 581, 591, 243 P.3d 919 (2010); *Progressive Animal Welfare Soc'y v. UW (PAWS II)*, 125 Wn.2d 243, 251 n.2, 884 P.2d 592 (1994). PRA exemptions must be narrowly construed. RCW 42.56.030; *Seattle Times*, 170 Wn.2d at 591; *PAWS II*, 125 Wn.2d at 260. "Administrative inconvenience or difficulty does not excuse strict compliance with the PRA." *Rental Housing Ass'n v. City of Des Moines*, 165 Wn.2d 525, 535, 199 P.3d 393 (2009) (citing *Zink v. City of Mesa*, 140 Wn. App. 328, 337, 166 P.3d 738 (2007)).



The PRA explicitly places the burden of proof on the agency, not the requester. RCW 42.56.550. In any action for judicial review the agency bears the burden of proof “to establish that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.” RCW 42.56.550(1); *Rental Housing Ass’n*, 165 Wn.2d at 535. Even if Koenig were the plaintiff in this case, the City would bear the burden to prove that it has complied with the PRA. *See, e.g., Mechling v. Monroe*, 152 Wn. App. 830, 842, 222 P.3d 808 (2009) (agency had burden of proof where requester was the plaintiff and appellant). Despite its efforts to improperly shift the burden of proof to Koenig, the burden remains on the City to show that it has complied with the PRA.

The PRA also requires agencies to **explain** how cited exemptions apply to withheld or redacted records. RCW 42.56.210(3) provides:

(3) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) **and a brief explanation of how the exemption applies to the record withheld.** (Emphasis added).

It is not enough for an agency to merely cite one or more exemptions. RCW 42.56.210(3) requires an agency to provide a brief explanation of how an exemption applies to a record. “Allowing the mere identification

of a document and the claimed exemption to count as a 'brief explanation' would render the brief-explanation clause superfluous." *Sanders*, 169 Wn.2d at 846. Koenig raised this point in his *Answer*, explaining that, as the requester, Koenig had no obligation to research the City's exemption claims to determine whether they were correct. CP 16. The City ignored Koenig at its peril.

Furthermore, an agency's failure to properly explain how specific exemptions apply to withheld records, as required by RCW 42.56.210(3), is a separate violation of the PRA. *Sanders*, 169 Wn.2d at 846. In *Sanders, supra*, the agency argued that the only remedy for a violation of the brief explanation requirement was to compel the agency to provide an explanation. The Supreme Court disagreed, noting that the PRA must provide a remedy (attorney fees) for an agency's failure to properly explain its exemption claims:

[T]he State's interpretation contravenes the PRA's purpose. If the only remedy for a failure to explain is to sue to compel explanation, the agency has no incentive to explain its exemptions at the outset. This forces requesters to resort to litigation, while allowing the agency to escape sanction of any kind. *Cf. Spokane Research & Defense Fund v. City of Spokane*, 155 Wn.2d 89, 103-04, 117 P.3d 1117 (2005) (refusing to allow agencies to resist complying with the PRA until after a suit is filed without facing a penalty).

*Sanders*, 169 Wn.2d at 847-48. Under *Sanders*, an agency that fails to provide the explanation of exemptions required by RCW 42.56.210(3) is

liable for attorney fees under RCW 42.56.550(4) whether or not the records at issue are later determined to be exempt or penalties are awarded. *Id.* at 848, 860; *Yakima County v. Yakima Herald-Republic*, 170 Wn.2d 775, 890, 246 P.3d 768 (2011).

In this case, the City repeatedly violated RCW 42.56.210(3) by failing to explain why driver's license numbers are exempt. Before this case was filed, the City had given Koenig numerous inconsistent and erroneous explanations as to why the City believed driver's license numbers were exempt. *See* section III(A) above. After the City filed this case, Koenig specifically warned the City that its redaction of driver's license numbers was erroneous, and that the City was violating its duties under the PRA by attempting to force Koenig to determine whether the City's exemption claims were correct. CP 16-17. And rather than promptly seeking judicial review of the sole issue of whether driver's license numbers are exempt, the City chose to fight a three-year long discovery battle that the City eventually lost.

When the City finally moved for summary judgment on remand, the City sought to rely on alleged "textual gaps in the PRA," "common sense," and a pastiche of inapplicable statutes and court rules. CP 62-63. That kind of sloppy analysis of exemptions is clearly prohibited by the

PRA, which requires the City to cite specific statutory exemptions, and to explain how those exemptions apply.

As set forth in the following subsections, the City has repeatedly violated RCW 42.56.210(3) and *Sanders, supra*, by failing to explain how the exemptions cited by the City apply to driver's license numbers. It is unclear which of its many and varied exemption claims the City will rely on in this appeal. In the trial court, after Koenig explained that all of the City's exemption theories were erroneous, CP 107-134, the City made no attempt to explain, defend, or retract any of the City's defective exemption claims. *See* CP 183-190.

It is also unclear which of the City's exemption theories, if any, were relied on by the trial court. The trial court erroneously held that driver's license numbers are "exempt from disclosure as a matter of law," but refused to state what specific statute, if any, exempted driver's license numbers from public disclosure. CP 229; RP 9.

#### **1. Definition of "public record"**

The City argued for the first time, in its motion for summary judgment, that "a driver's license number is not a 'public record,' under the PRA." CP 63. This argument was not supported by any authority, and is directly contrary to *Mechling v. Monroe*, 152 Wn. App. 830, 222 P.3d 808 (2009). In *Mechling*, the city redacted various emails based on an

assertion that some of the information in the emails did not meet the definition of a public record under the PRA. 152 Wn. App. at 854. The Court of Appeals squarely held that the definition of “public record”<sup>3</sup> is not a statutory exemption that allows an agency to redact records. “On remand, unless the City can establish a statutory exemption that allows redaction, the City must provide the e-mails without redaction.” 152 Wn. App. at 855. Under *Mechling*, the City cannot use the definition of “public record” to redact anything from a public record.

## **2. DPPA and *Reno v. Condon***

In its letter dated February 25, 2008, the City stated that it intended to rely on the DPPA and *Reno v. Condon, supra*, as a basis for redacting driver’s license numbers. CP 87. But the City has failed to explain why that statute or the cited case required the City to redact driver’s license numbers.

As a threshold matter, it is unclear why the City purported to rely on *Reno v. Condon, supra*, as the basis for its redactions. *Reno v. Condon* merely held that the DPPA did not violate either the Commerce Clause, U.S. Const., Art. I, § 8, cl. 3, or the principles of federalism in the Tenth and Eleventh Amendments to the Constitution. 528 U.S. at 148-150.

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<sup>3</sup> The PRA definition of “public record” in former RCW 42.56.010(2) was re-codified as RCW 42.56.020(3), effective January 1, 2012. Laws of 2010, ch. 204, § 1005.

The DPPA restricts the disclosure of certain “personal information” by certain parties. 18 USC § 2721(a) provides, in relevant part:

**(a) In general.**--A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:

(1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section...

18 USC § 2721(b) provides a list of fourteen (14) permissible uses for which “personal information” may be disclosed. *See City’s Motion* at 10,

n.1. “Personal information” is defined as:

information that identifies an individual, including an individual’s photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver’s status.

18 USC § 2725(3).

The City does not claim (or appear) to be a state department of motor vehicles or “any officer, employee, or contractor thereof.” 18 USC § 2721(a). Rather, the City asserts that it is an “authorized recipient” of “personal information,” and that as such the City may only resell or re-disclose the information for purposes permitted under 18 USC § 2721(b). CP 67-68; USC § 2721(c) (resale or redisclosure). But the City has not

established that it obtained the driver's license numbers from the Department of Licensing (DOL) in the first place. In many of the redacted records the driver's license number was **written by hand**, presumably from an investigating officer examining a person's driver's license card. CP 162, 166, 168.

Assuming, *arguendo*, that DPPA applies at all, the City has not explained why disclosing records to Koenig as required by the PRA is not a "permissible use" under 18 USC § 2721(b). Those enumerated uses include:

(1) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions.

....

(14) For any other use specifically authorized under the law of the State that holds the record, if such use is related to the operation of a motor vehicle or public safety.

18 USC § 2721(b). The City buried these permissible uses in a footnote without even considering the possibility that complying with the PRA is a permissible use under DPPA. CP 68.

The City appears to rely on a sweeping, muddled interpretation of the DPPA that cannot be logically or legally correct. The DPPA cannot be interpreted as a total prohibition on obtaining or disseminating information

defined as “personal information” under 18 USC § 2725(3) in any context. If it were, the DPPA would make it illegal to obtain or disseminate a person’s name or address for a purpose not listed as “permissible” under 18 USC § 2721(b).

Finally, the City correctly noted that the definition of “personal information” in 18 USC § 2725(3) includes a person’s name, address, and telephone number. CP 69. Yet the City disclosed names and addresses in the very same records from which the City redacted driver’s license numbers. CP 160-169. If the DPPA required the redaction of all “personal information” in the records provided to Koenig, why did the City redact only driver’s license numbers?

It is unclear whether or how the DPPA applies to any of the records requested by Koenig. As requester and defendant in this case, Koenig has no obligation to research the question further. By failing to meet its statutory burden of explaining why the DPPA required the City to redact driver’s license numbers, the City has violated RCW 42.56.210(3).

### **3. RCW 46.52.120 and RCW 46.52.130**

In its response on November 30, 2007, the City stated that it had redacted driver’s license numbers under RCW 46.52.120 and RCW 46.52.130. CP 75-76. On December 21, 2007, Koenig asked the City to clarify its reliance on these statutes to redact driver’s license numbers. CP



82. The City ignored Koenig's request, asserting that any further explanation was unnecessary. CP 88. Even though the City relied on RCW 46.52.120 and RCW 46.52.130 to redact driver's license numbers the City completely failed to address those statutes in its motion for summary judgment. CP 59-71.

As Koenig noted in his letter dated December 21, 2007, it is unclear why RCW 46.52.120 and RCW 46.52.130 would require the City to redact driver's license numbers. RCW 46.52.120 requires the DOL to keep a record of every licensed driver, and provides that such records are for the confidential use of the director and various law enforcement agencies. Koenig did not ask for records from the DOL, and RCW 46.52.120 does not purport to restrict information from other sources. Nor does the statute specifically address driver's license numbers.

RCW 46.52.130 requires DOL to produce abstracts of a person's driving record. Such abstracts may only be provided to certain persons or agencies, and further distribution by those persons or agencies is restricted. The records from which the City redacted driver's license numbers are *not* abstracts of driving records. CP 160-169.

#### **4. RCW 42.56.050 - Definition of "Privacy"**

In its response on November 30, 2007, the City stated that it had redacted driver's license numbers under RCW 42.56.050. CP 75-76. On

December 21, 2007, Koenig objected that the City's citation to this section was insufficient, and asked for clarification. CP 82. The City ignored Koenig's request, asserting that any further explanation was unnecessary. CP 88.

RCW 42.56.050 is *not* a PRA exemption. That section merely provides the definition of "privacy" used in other sections of the PRA that exempt private information from certain types of records. See RCW 42.56.230(3)-(4); RCW 42.56.240(1). RCW 42.56.050 establishes a narrowly-defined, two-prong test for privacy under the PRA:

A person's "right to privacy," "right of privacy," "privacy," or "personal privacy," as these terms are used in this chapter, is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public.

Even if the City's citation to RCW 42.56.050 were a proper PRA exemption (it is not), the City has not explained why driver's license numbers would be private under this section. Information is not private for purposes of the PRA unless both elements of RCW 42.56.050 are met. *King County v. Sheehan*, 114 Wn. App. 325, 344, 57 P.3d 307 (2002); *Koenig v. Des Moines*, 158 Wn.2d 173, 185, 142 P.3d 162 (2006); *Bellevue John Does 1-11 v. Bellevue School Dist.*, 164 Wn.2d 199, 217,

189 P.3d 139 (2008). The City's motion for summary judgment failed to address either prong of the privacy test in RCW 42.56.050. CP 59-71.<sup>4</sup>

#### 5. RCW 42.56.240

RCW 42.56.240 contains eight (8) subsections, creating exemptions for certain types of investigative records and information about witnesses and crime victims. The City's reliance on this section has been inconsistent and incoherent.<sup>5</sup>

In its response on November 30, 2007, the City cited "RCW 42.56.240" as one of several statutes justifying the redaction of dates of birth, driver's license numbers, and/or social security numbers. But the

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<sup>4</sup> The City's motion for summary judgment discussed *Tacoma Public Library v. Woessner*, 90 Wn. App. 205, 951 P.2d 357 (1998). CP 62. That case held that employee identification numbers could be redacted as private under RCW 42.56.230(3) (former RCW 42.17.310(1)(b)) which exempts "[p]ersonal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy." This Court held that employee identification numbers were private because disclosure of such numbers would allow public access to "private information such as employee non-public job evaluations, charitable contributions, private addresses and phone numbers." 90 Wn. App. at 218. In this case, the City did not rely on RCW 42.56.230(3) as the basis for redacting driver's license numbers. Nor has the City explained how the analysis of the PRA's two-prong privacy test in *Tacoma Public Library* would extend to driver's license numbers.

<sup>5</sup> In its motion for summary judgment the City claimed to have relied on "RCW 42.56.240" in the earlier *Koenig v. Lakewood* case. CP 69-70. In fact, the City's *Disclosure Chart* in that case purported to redact driver's license numbers under (i) DPPA/*Reno*; (ii) WAC 308-56A-090; and (iii) former RCW 46.12.390. CP 155-156. In its unpublished opinion, this Court noted that the City had redacted driver's license numbers under (former) RCW 46.12.390, but the Court did not address the issue of whether such redactions were appropriate. CP 70, 97, 104. The Court noted that the City had redacted information about concealed pistol licenses under RCW 42.56.240(4). But the Court never suggested that driver's license numbers were exempt under that subsection or any other subsection of RCW 42.56.240.

City did not clarify whether it had redacted the driver's license numbers under "RCW 42.56.240" or one of the other cited statutes. CP 76.

In the letter dated December 21, 2007, Koenig suggested that the City might have meant to cite RCW 42.56.240(1) (investigative records). CP 82. But the City refused to clarify its exemption claims under "RCW 42.56.240" (except to assert that dates of birth were exempt under RCW 42.56.240(2)). CP 87.

RCW 42.56.240(1) has two different prongs that must be analyzed separately. That section provides an exemption for investigative records "the nondisclosure of which is essential to [1] effective law enforcement or [2] for the protection of any person's right to privacy." *See Sheehan*, 114 Wn. App. at 335-349 (separately addressing and rejecting redaction of police officers' names under both prongs of former RCW 42.17.310(1)(d)). The City has never clarified whether it has redacted driver's license numbers under either the privacy prong or the effective law enforcement prong, under neither prong, or under both.

Finally, assuming, *arguendo*, that the City meant to rely on the privacy prong of RCW 42.56.240(1) to redact driver's license numbers, the City has not explained how driver's license numbers could be private under the narrow, two-prong test for privacy in RCW 42.56.050. *See* subsection (A)(4) (above). In sum, the City has completely failed to

explain why driver's license numbers would be exempt under any of the subsections of RCW 42.56.240.

**6. RCW 42.56.070(1)**

In its motion for summary judgment, the City falsely asserted that the City redacted driver's license numbers as "identifying details" under RCW 42.56.070(1). CP 64. The record clearly shows that the City cited RCW 42.56.050, RCW 42.56.240, RCW 46.52.120, RCW 46.52.130 and DPPA/*Reno* as the basis for redacting driver's license numbers. CP 75-77, 86-89. But the City *never* cited RCW 42.56.070 in its responses to Koenig's requests. As set forth in section III(C) (above), the City's motion for summary judgment purported to quote from the City's initial response on November 30, 2007. But that quotation was an outright fabrication. *Compare* CP 75-76; *with* CP 60. Even if driver's license numbers were subject to redaction under RCW 42.56.070(1), the City is still liable under RCW 42.56.210(3) and *Sanders, supra*, because the City never cited RCW 42.56.070(1) in response to Koenig's requests.

RCW 42.56.070(1) allows agencies to redact unspecified "identifying details" to the extent required to protect privacy.

(1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of \*subsection (6) of this section, this chapter, or other statute which exempts or prohibits

disclosure of specific information or records. **To the extent required to prevent an unreasonable invasion of personal privacy interests protected by this chapter, an agency shall delete identifying details in a manner consistent with this chapter when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.** (Emphasis added).

RCW 42.56.070. Even if the City had relied on this section in response to Koenig's requests, the City still has not explained why driver's license numbers would be private for purposes of this section. As set forth in subsection (4) (above), the City has not explained why driver's license numbers would be private under the two-prong test in RCW 42.56.050. Furthermore, the City has not explained why it redacted some identifying details (driver's license numbers) but not others (name, address, phone number, or date of birth). *See* CP 160-169.

#### **7. RCW 42.56.590**

In its motion for summary judgment, the City argued that driver's license numbers are exempt under RCW 42.56.590. CP 65. Even if this section required the redaction of driver's license numbers, the City remains liable under RCW 42.56.210(3) and *Sanders, supra*, because the City never cited RCW 42.56.590 in its response to Koenig's requests.

RCW 42.56.590(1) merely requires agencies to provide notice of security breaches to any resident whose unencrypted "personal information" is acquired by an unauthorized person. This statute does not

create a PRA exemption. Nor has the City argued otherwise. RCW 42.56.590(6) expressly provides that “‘personal information’ does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.” This subsection clearly demonstrates that sensible data security requirements and narrow PRA exemptions are *not* the same thing.

Furthermore, the City admits that the records requested by Koenig are *not* computerized data maintained by the City. CP 65. Nonetheless, the City asserts that “statutes are meant to be read as a whole,” and argues that RCW 42.56.590 must somehow indicate that the legislature intended driver’s license numbers to be redacted under RCW 42.56.070. CP 65.

The PRA requires the City to cite a specific PRA exemption, narrowly construed. *PAWS II*, 125 Wn.2d at 251 n.2; *id.* at 260. Those exemptions, in turn, may apply to only specific types of records, not generic types of information. Information that is exempt in one type of record may not be exempt in another. *See Mechling*, 152 Wn. App. at 845-46 (exemption for email addresses in former RCW 42.17.310(1)(u) (RCW 42.56.250(3)) is not applicable to email messages in which City business is discussed by public officials); *Lindeman v. Kelso School Dist.*, 162 Wn.2d 196, 203, 172 P.3d 329 (2007) (surveillance videotape was not governed by exemption for student files in former RCW 42.17.310(1)(a)).

Given the City's concession that this case does not involve the City's computerized data, the City has completely failed to explain why RCW 42.56.590 would require redaction of driver's license numbers in the records requested by Koenig.

#### **8. Other Laws Cited by the City**

The City also cited the legislative policy and definition sections of Chapter 19.215 RCW, but ignores the operative portions of that chapter. CP 66. RCW 19.215.020 provides, in relevant part:

(1) An entity must take all reasonable steps to destroy, or arrange for the destruction of, personal financial and health information and personal identification numbers issued by government entities in an individual's records within its custody or control when the entity is disposing of records that it will no longer retain...

(3) This subsection [section] does not apply to the disposal of records by a transfer of the records, not otherwise prohibited by law, to another entity, including a transfer to archive or otherwise preserve public records as required by law.

The first subsection does not purport to create a PRA exemption. That subsection is not an "other statute which exempts or prohibits disclosure of specific information or records." RCW 42.56.070(1). Rather, that subsection governs **disposal** of records, not disclosure of records. A sensible requirement of careful data destruction does not establish that the same data is somehow exempt from disclosure under the PRA. Furthermore, the City has not attempted to explain why subsection (3)



(above), which excludes the application of the first subsection to any transfer of records, is not controlling.

The City's motion noted that unauthorized possession of another person's "personal identification" is a gross misdemeanor under RCW 9A.56.330. CP 67. But the City failed to note that "personal identification" means a person's "driver's license, passport, or identification *card*." RCW 9A.56.280(13) (emphasis added). RCW 9A.56.330 does *not* prohibit the possession of a driver's license *number*.

The City's motion noted that an application for a concealed pistol license requires a driver's license number, RCW 9.41.070(4), and that such applications are exempt under the RCW 42.56.240(4). CP 67. But the records redacted by the City are not applications for concealed pistol licenses. Furthermore, an application for a concealed pistol license also requires a name, address, and telephone number, RCW 9.41.070(4), but the City has not redacted such information. CP 160-169.

Finally the City's motion noted that a driver's license number is a "restricted personal identifier" under GR 15(b)(6) and GR 22(b)(6), and erroneously asserted that a driver's license number "is not to be publically filed with a court." CP 67. GR 15(c)(2)(E), upon which the City relied, merely authorizes a court to seal or redact certain information. In contrast, GR 31(e)(1), which the City has not cited, requires redaction of driver's

license numbers from documents filed in court “unless necessary.” By its own terms, GR 31 only applies to court records. GR 31 does *not* authorize the redaction of anything from records requested from non-judicial agencies under the PRA. The supreme court has clearly stated that access to court records is governed by court rules while access to other agency records is governed by the PRA. *Yakima County*, 170 Wn.2d at 792.

In sum, the City has completely failed to explain why driver’s license numbers were redacted from the records requested by Koenig. This Court should hold that the City has violated RCW 42.56.210(3) by failing to explain its redactions.

**B. The City is liable for attorney fees under RCW 42.56.550(4) and *Sanders, supra*, regardless of whether driver’s license numbers are exempt.**

The PRA requires an award of attorney fees to the prevailing requester in a PRA case. RCW 42.56.550(4). As explained in section A (above), an agency that fails to provide the explanation of exemptions required by RCW 42.56.210(3) is liable for attorney fees under RCW 42.56.550(4) **whether or not** the records at issue are later determined to be exempt or daily penalties are awarded. *Sanders*, 169 Wn.2d at 848, 860; *Yakima County*, 170 Wn.2d at 890.

As set forth in Section A, the City has repeatedly violated RCW 42.56.210(3) and *Sanders, supra*, by failing to explain how the exemptions

cited by the City apply to driver's license numbers. As a result, the City is liable for attorney fees under RCW 42.56.550(4). The trial court erred in failing to award attorney fees to Koenig.

**C. Koenig is entitled to reasonable attorney fees for this appeal.**

Koenig respectfully requests an award of attorney fees pursuant to RAP 18.1. The PRA provides for an award of reasonable attorney fees:

(4) Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a shall be awarded all costs, including reasonable attorney fees, **incurred in connection with** such legal action.

RCW 42.56.550 (emphases added). This provision includes awards of attorney fees on appeal. *See Progressive Animal Welfare Soc'y v. UW (PAWS I)*, 114 Wn.2d 677, 690, 790 P.2d 604 (1990). This provision also applies where, as here, the PRA lawsuit is initiated by the agency. *Soter v. Cowles Pub'g Co.*, 162 Wn.2d 716, 753 n.16, 174 P.3d 60 (2007).

**V. CONCLUSION**

This Court should reverse the erroneous decision of the trial court, and hold that the City has violated the PRA by failing to explain why driver's license numbers are exempt from disclosure. This matter should be remanded to the trial court for an award of attorney fees.

Koenig is also entitled to attorney fees and costs for this appeal.

RESPECTFULLY SUBMITTED this 18th day of May, 2012.

By:   
William John Crittenden, WSBA No. 22033

WILLIAM JOHN CRITTENDEN  
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Attorney for Appellant David Koenig

**Certificate of Service**


I, the undersigned, certify that on the 18th day of May, 2012, I caused a true and correct copy of this pleading to be served, by the method(s) indicated below, to the following person(s):


By email (PDF) to:

[mkaser@ci.lakewood.wa.us](mailto:mkaser@ci.lakewood.wa.us)

and First Class Mail to:

Matthew Kaser  
City of Lakewood  
6000 Main St SW  
Lakewood WA 98499-5027

  
William John Crittenden, WSBA No. 22033

FILED  
COURT OF APPEALS  
DIVISION II  
2012 MAY 21 PM 12:03  
STATE OF WASHINGTON  
BY  DEPUTY

# **APPENDIX**

CP 160-169

03/06/2006 8:52 AM

D O C K E T

## DEFENDANT

ROBERTS, DANIEL JAMES

CASE: CR0025258 LKM  
Criminal Non-Traffic  
Agency No. 050251006

## TEXT - Continued

S 03/10/2005 HIV Review Set for 05/20/2005 DLW  
U \*\*\* APPEARANCE WAIVED AT FINAL HEARING IF IN COMPLIANCE  
S OTH DISPO Set For 03/09/2006 09:00 AM In Room 1  
Accounts Receivable Created 300.00  
Case Scheduled on Time Pay Agreement 1 for: 300.00  
U FINE TO BE PAID IN FULL/ACCT TO BE EST W/SIGNAL BY 5/20/05.  
S PTR: Held  
Proceedings Recorded on Tape No. CD5-010  
04/04/2005 5094100150 Time Payment Received 300.00 TJM  
Case Paid in Full and Removed from Time Pay  
U PROOF OF HIV TEST FILED SRP  
04/06/2005 T/C FROM DEF - ADV PYMNT & PROOF OF HIV TEST REC'D. CLP  
S Defendant Complied with HIV Test SRP  
U 07/06/2005 REQUEST FOR COPY OF FILE RCVD FROM DETECTIVE JOHNSON (LPD) WLG  
COPY PROVIDED AS REQUESTED  
S 02/08/2006 Notice Issued for OTH DISPO on 03/09/2006 09:00 AM  
U 02/09/2006 T/C FROM DEF TO SEE IF APPEARANCE WAIVED - ADVISED TO CONTACT  
COURT JUST PRIOR TO HEARING TO VERIFY IF WAIVED  
02/13/2006 T/C FROM DEF - ADV CURRENTLY IN COMPLIANCE AND TO CONTACT JAB  
COURT COUPLE DAYS PRIOR TO HRG TO VERIFY IF WAIVED  
T/C FROM ATTY WINSKILLS OFFICE - ADV DEF CURRENTLY IN  
COMPLIANCE AND TO CALL JUST PRIOR TO HRG FOR WAIVER

## ACCOUNTING SUMMARY

	Total Due	Paid	Credit	Balance
Timepay: N	300.00	300.00		

## ADDITIONAL CASE DATA

Case Disposition  
Disposition: OPEN

## Parties

Attorney WINSKILL, DONALD WILLIAM

## Personal Description

Sex: M Race: W DOB: 03/04/1947  
Dr.Lic.No.: [REDACTED] State: WA Expires: 2007  
Employer:  
Height: 5 10 Weight: 200 Eyes: HAZ Hair: GRY

## Hearing Summary

Held PRE TRIAL HEARINGS ON 03/10/2005 AT 01:00 PM IN ROOM 1 WITH PRO  
Schedule DISPOSITION HEARING ON 03/09/2006 AT 09:00 AM IN ROOM 1 WITH

End of docket report for this case

3/10/06 TSCC

OK to

D. J. [REDACTED]

C

APPENDIX

Exhibit E - 25

CP 160

03/06/2006 8:52 AM

D O C K E T

## DEFENDANT

ROBERTS, DANIEL JAMES

CASE: CRO025258 LKM  
Criminal Non-Traffic  
Agency No. 050251006

## TEXT - Continued

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04/06/2005 T/C FROM DEF - ADV PYMNT & PROOF OF HIV TEST REC'D. CLP  
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02/13/2006 T/C FROM DEF - ADV CURRENTLY IN COMPLIANCE AND TO CONTACT JAB  
COURT COUPLE DAYS PRIOR TO HRG TO VERIFY IF WAIVED  
T/C FROM ATTY WINSKILLS OFFICE - ADV DEF CURRENTLY IN  
COMPLIANCE AND TO CALL JUST PRIOR TO HRG FOR WAIVER

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Disposition: OPEN

## Parties

Attorney WINSKILL, DONALD WILLIAM

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Employer:  
Height: 5 10 Weight: 200 Eyes: HAZ Hair: GRY

## Hearing Summary

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Schedule DISPOSITION HEARING ON 03/09/2006 AT 09:00 AM IN ROOM 1 WITH

End of docket report for this case

3/10/07 sec

OK

D. J. [REDACTED]

C

**CRIMINAL** ☐ **TRAFFIC** ☒ **NON-TRAFFIC** **CR**

25258

IN THE ☐ DISTRICT ☒ MUNICIPAL COURT OF LAKEWOOD / PIERCE CO.  
☐ STATE OF WASHINGTON PLAINTIFF VS. NAMED DEFENDANT  
☐ COUNTY OF PIERCE  
☒ CITY/TOWN OF LAKEWOOD

WASHINGTON

LEA. ORI #: WA0272300

COURT ORI #:

THE UNDERSIGNED CERTIFIES AND SAYS THAT IN THE STATE OF WASHINGTON

DRIVER'S LICENSE NO. [REDACTED] STATE WA EXPIRES 03/07 PHOTO I.D. ON PERSON ☒ YES ☐ NO

NAME: LAST FIRST MIDDLE  
ROBERTS DANIEL JAMES

ADDRESS 1110 134TH ST CT S ☐ IF NEW ADDRESS

CITY TACOMA STATE WA ZIP CODE 98444 EMPLOYER LOCATION

DATE OF BIRTH 03/24/47 RACE W SEX M HEIGHT 510 WEIGHT 200 EYES HAZ HAIR GRN

RESIDENTIAL PHONE NO. (253) 537-2339 CELL / PAGER NO. WORK PHONE NO.

VIOLATION DATE MONTH DAY YEAR TIME 01 25 05 1900 ☐ INTERPRETER NEEDED

ON OR ABOUT AT LOCATION 2402 84th St S LAKEWOOD PIERCE CITY / COUNTY OF

DID OPERATE THE FOLLOWING VEHICLE/MOTOR VEHICLE ON A PUBLIC HIGHWAY AND

VEHICLE LICENSE NO. STATE WA EXPIRES VEH. YR. MAKE MODEL STYLE COLOR

TRAILER #1 LICENSE NO. STATE EXPIRES TR. YR. TRAILER #2 LICENSE NO. STATE EXPIRES TR. YR.

OWNER/COMPANY IF OTHER THAN DRIVER

ADDRESS CITY STATE ZIP CODE

ACCIDENT BAC COMMERCIAL ☐ YES HAZARD ☐ YES EXEMPT ☐ FARM ☐ FIRE

NO NR R I F READING VEHICLE ☐ NO PLACARD ☐ NO VEHICLE ☐ R.V. ☐ OTHER

DID THEN AND THERE COMMIT EACH OF THE FOLLOWING OFFENSES

1. VIOLATION/STATUTE CODE RW 9A.88.110 ☐ OV

PATRONIZING A PROSTITUTE

2. VIOLATION/STATUTE CODE ☐ DV

☒ MANDATORY COURT APPEARANCE OR ☐ BAIL FORFEITURE IN U.S. \$ (MAND)

APPEARANCE DATE 02 08 05 1030 AM RELATED # DATE ISSUED 01/25/05

WITHOUT ADMITTING HAVING COMMITTED EACH OF THE ABOVE OFFENSE(S), I PROMISE TO APPEAR AS DIRECTED ON THIS NOTICE.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT I HAVE ISSUED THIS ON THE DATE AND AT THE LOCATION ABOVE, THAT I HAVE PROBABLE CAUSE TO BELIEVE THE ABOVE NAMED PERSON COMMITTED THE ABOVE OFFENSE(S), AND MY REPORT WRITTEN ON THE BACK OF THIS DOCUMENT OR ATTACHED TO IS TRUE AND CORRECT.

DEFENDANT'S SIGNATURE [Signature] OFFICER [Signature] ESTES '12 04-032

COMPLAINT / CITATION

CRG	PLEA	CNG	FINDINGS	FINE	SUSPENDED	SUB-TOTAL	FND/JUDG DATE
1	G NG		G NG D BF	\$	\$	\$	ABS. MLD TO CLY
2	G NG		G NG D BF	\$	\$	\$	TO SERVE
OTHER COSTS \$						WITH DAYS SUSP.	
RECOMMENDED NONEXTENSION OF SUSPENSION <input type="checkbox"/>				LICENSE SUR-RENDER DATE		TOTAL COSTS \$	
						CREDIT/TIME SVD	

WASHINGTON UNIFORM COURT DOCKET - COURT COPY  
WASHINGTON UNIFORM COURT DOCKET - DOL COPYJanuary 2003  
January 2003



0091I Top of list

DN2000SX

03/01/05 09:19:03

DN2001MI Defendant Case History (DCH)

LAKEWOOD MUNICIPAL

PUB 1 of 1

Case: CR0025258 LKM CN Csh:

Pty: DEF 1

StId: D

Name: ROBERTS, DANIEL JAMES

NmCd: IN 115 59005

CONFIDENTIAL--NOT FOR RELEASE

More>

True Name: ROBERTS, DANIEL JAMES

IN 115 59005

1 Case

AKA's:

Violation

--- Status ---

S N Case LEA Ty Crt Date Short Title

DV Jg CD W F O

CR0025258 LKM CN LKM 01/25/05 PATRONIZING A PROSTITUTE

N

PF1	PF2	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP	PER	CDK	PLS	CDT	BWD	FWD	DOL	COS	CFHS	EXIT

ate: 3/1/2005 Time: 9:24:22 AM

walking at that time. Watkins then observed the patrol car hit the pedestrian which caused her body to flip in the air then landing on her back. He did not observe Sheridan or Officer Moody take any evasive action prior to impact. Watkins went to help and heard Sheridan state she couldn't believe this happened to her and that it was going to be a lawsuit. He also heard Officer Moody respond to Sheridan's statement saying he knew. Watkins estimated the patrol car's speed at the time of impact to be 10-15 mph.

During initial contact with officers arriving on scene, Watkins related Sheridan's comments after being struck reference it was going to be a lawsuit. Watkins was hesitant about putting the quote in his statement telling Officer Hicks *"No I'm not going to do that, it makes the lady look bad, I'm not interfering with her getting paid, she got hit by a cop"* and *"I shouldn't have said anything, she got hit by a cop and I don't want to make that lady look bad, no, I'm not writing that down, I shouldn't have said anything"* and *"I shouldn't have opened my big mouth to cops."*

**James Jones<sup>4</sup>** - While sitting at the red traffic light, Jones observed the pedestrian (Sheridan) standing on the street corner as well as Officer Moody's police vehicle. Jones didn't see Sheridan hit the pedestrian signal button but wasn't necessarily paying attention. Jones said Officer Moody's light turned green and that the patrol car began its turn normally. Jones said the patrol car was going 10-15 mph and wasn't speeding when the collision occurred. He also said that Sheridan was not paying attention to the approaching police vehicle and had no reaction prior to being struck. The impact caused Sheridan to flip and land on her back.

**Tony White, Fife Police Corrections Officer<sup>5</sup>** - Officer White was leaving the Police Department after the conclusion of his shift. He was directly behind Officer Moody when the light turned green and Moody proceeded into the intersection. White stated that Moody's vehicle stopped in the intersection and activated the overhead emergency lights. White did not initially observe Sheridan or the collision. White stopped to assist after seeing Sheridan lying in the roadway.

#### 6) SHERIDAN PROFILE AND STATEMENTS

Cathy Sheridan is a 45 year old white female who is employed by a governmental agency in Seattle, Washington. Sheridan routinely takes the bus to and from work in Seattle and resides at the Sunshine Motel in Fife, Washington. Sheridan has no record of a Washington driver's license or identification. She has an Alaska driver's license that expired in 1992 under the name Cathy Enger [REDACTED]. Her status in Global<sup>6</sup> is positive with contacts noted for CPS issues (03-0130938, 04-2960356), vandalism victim (03-2540051) and unlawful firearm possession - her child was found to possess a firearm at school (03-3230783).

<sup>4</sup> Perspective as right front passenger in Watkins van.

<sup>5</sup> Perspective from position directly behind Officer Moody on 38<sup>th</sup> at Pacific Highway. Officer White had just completed his shift and was on his way home.

<sup>6</sup> Local History Data Base - LESA Records, Pierce County

**Fife Police Department**  
**Case Number 2006005188 (WA0270700)**

**Incident Detail Report**

**Printed On: Mon, Nov 13, 2006**

**Associations**

<b>Name:</b> Sheridan, Cathy J.	Driver License: [REDACTED]	<b>Victim</b>
<b>Role:</b> Victim		<b>Resident:</b>
<b>Phone:</b> (253)926-0949	<b>DOB:</b> [REDACTED]	<b>Age (Range):</b> 45
<b>Address:</b> 3801 Pacific Hwy E, Unit 208, Fife, WA 98424		<b>Organization Type:</b>
<b>Sex:</b> Female	<b>Race:</b> White	<b>LGN:</b>
<b>Eye Color:</b> Blue	<b>Hair Color:</b> Blond	<b>Disability:</b>
	<b>Height:</b> 5'04"	<b>Weight:</b> 125 lbs.
<b>Name:</b> Jones, James Bruce	Driver License: [REDACTED]	
<b>Role:</b> Witness		<b>Resident:</b> In State
<b>Phone:</b> (253)304-1981	<b>DOB:</b> [REDACTED]	<b>Age (Range):</b> 22
<b>Address:</b> 1710 E. 56th St., Tacoma, WA 98404		<b>Organization Type:</b>
<b>Sex:</b> Male	<b>Race:</b> White	<b>LGN:</b>
<b>Eye Color:</b> Blue	<b>Hair Color:</b> Brown	<b>Disability:</b>
	<b>Height:</b> 5'06"	<b>Weight:</b> 137 lbs.
<b>Name:</b> Moody L, Raymond	Driver License: [REDACTED]	
<b>Role:</b> Driver of Vehicle		<b>Resident:</b>
<b>Phone:</b> (253)922-6633	<b>DOB:</b> [REDACTED]	<b>Age (Range):</b> 52
<b>Address:</b> 3737 Pacific Hwy E, Fife, WA 98424		<b>Organization Type:</b>
<b>Sex:</b> Male	<b>Race:</b> White	<b>LGN:</b>
<b>Eye Color:</b>	<b>Hair Color:</b> Brown	<b>Disability:</b>
	<b>Height:</b>	<b>Weight:</b>
<b>Name:</b> Sheridan, Michael	Driver License: [REDACTED]	
<b>Role:</b> Other		<b>Resident:</b>
<b>Phone:</b> (253)926-0949	<b>DOB:</b> [REDACTED]	<b>Age (Range):</b> 49
<b>Address:</b> 3801 Pacific Hwy E, Unit 208, Fife, WA 98424		<b>Organization Type:</b>
<b>Sex:</b> Male	<b>Race:</b> White	<b>LGN:</b>
<b>Eye Color:</b> Blue	<b>Hair Color:</b> Brown	<b>Disability:</b>
	<b>Height:</b> 5'10"	<b>Weight:</b> 185 lbs.
<b>Name:</b> Watkins, Justiu David	Driver License: [REDACTED]	
<b>Role:</b> Witness		<b>Resident:</b> County
<b>Phone:</b> (253)476-0144	<b>DOB:</b> [REDACTED]	<b>Age (Range):</b> 28
<b>Address:</b> 1423 E. 64th St, Tacoma, WA 98404		<b>Organization Type:</b>
<b>Sex:</b> Male	<b>Race:</b> White	<b>LGN:</b>
<b>Eye Color:</b> Brown	<b>Hair Color:</b> Brown	<b>Disability:</b>
	<b>Height:</b> 6'03"	<b>Weight:</b> 180 lbs.

**Case Property Items:**

**Property Room Items:**

**State Property**

<u>ISN</u>	<u>TSN</u>	<u>PTC</u>	<u>Property Type Description</u>	<u>Date Stolen</u>	<u>Stolen Value</u>	<u>Date Recovered</u>	<u>Recov Value</u>	<u>Recov Cd</u>
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**Citations**

<u>Citation Number</u>	<u>Date</u>	<u>Time</u>	<u>Last</u>
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STATE OF WASHINGTON  
POLICE TRAFFIC  
COLLISION REPORT



1591971

REPORT NO. 2475237

INTERSTATE <input type="checkbox"/>	CITY STREET <input checked="" type="checkbox"/>	FIRE RESULTED <input type="checkbox"/>
STATE ROUTE <input type="checkbox"/>	OTHER <input type="checkbox"/>	STOLEN VEHICLE <input type="checkbox"/>
COUNTY RD <input type="checkbox"/>	PRIVATE WAY <input type="checkbox"/>	HIT & RUN INVOLVED <input type="checkbox"/>

TRIBAL RESERVATION
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CASE #	06-5188
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LOCAL AGENCY CODING
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TOTAL # OF UNITS	01	OBJECT STRUCK
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DATE OF COLLISION	11-08-2006	TIME (2400)	181327	COUNTY #		MILES		N <input type="checkbox"/> E <input type="checkbox"/> S <input type="checkbox"/> W <input type="checkbox"/>	IN <input checked="" type="checkbox"/> OF <input type="checkbox"/>	CITY #	0450
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ON (PRIMARY TRAFFIC WAY)	INTERSECTION <input checked="" type="checkbox"/> NON-INTERSECTION <input type="checkbox"/>	PACIFIC Hwy E	BLOCK NO.		MILE POST	
--------------------------	--	---------------	-----------	--	-----------	--

DISTANCE		MILES <input type="checkbox"/> N <input type="checkbox"/> E <input type="checkbox"/> FEET <input type="checkbox"/> S <input type="checkbox"/> W <input type="checkbox"/>	OF (REFERENCE OR CROSS STREET)	38 AVE
----------	--	--	--------------------------------	--------

UNIT 01	MOTOR VEHICLE <input checked="" type="checkbox"/> PEDAL-CYCLE <input type="checkbox"/>	DAMAGE THRESHOLD MET YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	PHONE	253-922-6633
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LAST NAME	MOODY	FIRST NAME	RAYMOND	MIDDLE INITIAL	L
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STREET NEW ADDRESS	3737 PACIFIC HWY E
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CITY	FIFE	ST	WA	ZIP	98424
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CDL	ENDORSEMENTS	RESTRICTIONS
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DRIVER'S LICENSE #		STATE	WA	SEX	M	D.O.B.	
--------------------	--	-------	----	-----	---	--------	--

ON DUTY <input checked="" type="checkbox"/>	STATUS	AIRBAG	2	RESTR.	4	EJECT	1	HELMET USE		INJURY CLASS	1	NATURE OF INJURIES
---	--------	--------	---	--------	---	-------	---	------------	--	--------------	---	--------------------

LICENSE PLATE #	37017D	STATE	WA	VIN#	1FMZU62K13UB97282
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TRAILER PLATE #		STATE		TRAILER PLATE #		STATE	
-----------------	--	-------	--	-----------------	--	-------	--

VEH. YEAR	2003	MAKE	FORD	MODEL	EXPL	STYLE	4DR	VEHICLE TOWED YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	TOWED BY		GOVT. VEHICLE YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
-----------	------	------	------	-------	------	-------	-----	---	----------	--	---

REGISTERED OWNER INFO	CITY OF FIFE 3737 PACIFIC HWY E FIFE, WA 98424
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LIABILITY INSURANCE IN EFFECT <input checked="" type="checkbox"/>	INSURANCE CO. & POLICY #	WCTA SELF INSURED
---	--------------------------	-------------------

UNIT 02	MOTOR VEHICLE <input type="checkbox"/> PEDAL-CYCLE <input type="checkbox"/> PEDESTRIAN <input checked="" type="checkbox"/> PROPERTY OWNER <input type="checkbox"/>	DAMAGE THRESHOLD MET YES <input type="checkbox"/> NO <input type="checkbox"/>	PHONE	253-926-0949
---------	--	---	-------	--------------

LAST NAME	SHERIDAN	FIRST NAME	CATHY	MIDDLE INITIAL	J
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STREET NEW ADDRESS	3801 PACIFIC HWY E #208
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CITY	FIFE	ST	WA	ZIP	98424
------	------	----	----	-----	-------

CDL	ENDORSEMENTS	RESTRICTIONS
-----	--------------	--------------

DRIVER'S LICENSE #		STATE	AK	SEX	F	D.O.B.	
--------------------	--	-------	----	-----	---	--------	--

ON DUTY <input type="checkbox"/>	STATUS	3	AIRBAG		RESTR.		EJECT		HELMET USE		INJURY CLASS	7	NATURE OF INJURIES	SORE HIP
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LICENSE PLATE #		STATE		VIN#	
-----------------	--	-------	--	------	--

TRAILER PLATE #		STATE		TRAILER PLATE #		STATE	
-----------------	--	-------	--	-----------------	--	-------	--

VEH. YEAR		MAKE		MODEL		STYLE		VEHICLE TOWED YES <input type="checkbox"/> NO <input type="checkbox"/>	TOWED BY		GOVT. VEHICLE YES <input type="checkbox"/> NO <input type="checkbox"/>
-----------	--	------	--	-------	--	-------	--	--	----------	--	--

REGISTERED OWNER INFO	
-----------------------	--

LIABILITY INSURANCE IN EFFECT <input type="checkbox"/>	INSURANCE CO. & POLICY #	
--	--------------------------	--

OFFICER'S NAME (PRINT)	LT. WESTOVER	BADGE OR ID #	240	AGENCY	FIFE PD
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PART A APPENDIX

Exhibit F - 57

PAGE 01 OF

CP 166



STATE OF WASHINGTON  
POLICE TRAFFIC  
COLLISION REPORT



1591971

REPORT NO. 2415237

INTERSTATE ☐ CITY STREET ☒  
STATE ROUTE ☐ OTHER ☐  
COUNTY RD ☐ PRIVATE WAY ☐

FIRE RESULTED ☐  
STOLEN VEHICLE ☐  
HIT & RUN INVOLVED ☐

CASE # 06-5188

LOCAL AGENCY CODING

TOTAL # OF UNITS 01 OBJECT STRUCK

TRIBAL RESERVATION

DATE OF COLLISION 11-08-2006 TIME (2400) 181327 COUNTY # MILES CITY #  
N ☐ E ☐ IN ☒ S ☐ W ☐ OF 0450

ON (PRIMARY TRAFFIC WAY) INTERSECTION ☒ NON-INTERSECTION ☐

PACIFIC HWY E BLOCK NO. MILE POST

DISTANCE OF (REFERENCE OR CROSS STREET)  
MILES ☐ N ☐ E ☐ FEET ☐ S ☐ W 38 AV E

UNIT 01 MOTOR VEHICLE ☒ PEDAL CYCLE ☐ DAMAGE THRESHOLD MET YES ☐ NO ☒ PHONE 253-922-6633

LAST NAME MOODY FIRST NAME RAYMOND MIDDLE INITIAL L

STREET NEW ADDRESS 3737 PACIFIC HWY E

CITY FIFE ST WA ZIP 98424

CDL ENDORSEMENTS RESTRICTIONS

DRIVER'S LICENSE # STATE WA SEX M D.O.B. MMDDYYYY

ON DUTY ☒ STATUS AIRBAG 2 RESTR. 4 EJECT 1 HELMET USE INJURY CLASS 1 NATURE OF INJURIES

LICENSE PLATE # 37017D STATE WA VIN# 1FMZU62K13UB97282

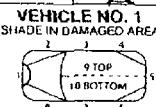
TRAILER PLATE # STATE TRAILER PLATE # STATE

VEH. YEAR 2003 MAKE FORD MODEL EXPL STYLE 4DR VEHICLE TOWED YES ☐ NO ☒ TOWED BY GOVT. VEHICLE YES ☐ NO ☐

REGISTERED OWNER INFO CITY OF FIFE 3737 PACIFIC HWY E FIFE, WA 98424

LIABILITY INSURANCE IN EFFECT ☒ INSURANCE CO & POLICY # UCIA SELF INSURED

VEHICLE LEGALLY STANDING YES ☐ NO ☐ CITATION # CHARGE



UNIT 02 MOTOR VEHICLE ☐ PEDAL CYCLE ☐ PEDESTRIAN ☒ PROPERTY OWNER ☐ DAMAGE THRESHOLD MET YES ☐ NO ☐ PHONE 253-926-0949

LAST NAME SHERIDAN FIRST NAME CATHY MIDDLE INITIAL J

STREET NEW ADDRESS 3801 PACIFIC HWY E #208

CITY FIFE ST WA ZIP 98424

CDL ENDORSEMENTS RESTRICTIONS

DRIVER'S LICENSE # STATE AK SEX F D.O.B. MMDDYYYY

ON DUTY ☐ STATUS 3 AIRBAG RESTR. EJECT HELMET USE INJURY CLASS 7 NATURE OF INJURIES SORE HIP

LICENSE PLATE # STATE VIN#

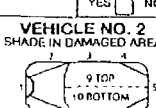
TRAILER PLATE # STATE TRAILER PLATE # STATE

VEH. YEAR MAKE MODEL STYLE VEHICLE TOWED YES ☐ NO ☐ TOWED BY GOVT. VEHICLE YES ☐ NO ☐

REGISTERED OWNER INFO

LIABILITY INSURANCE IN EFFECT ☐ INSURANCE CO & POLICY #

VEHICLE LEGALLY STANDING YES ☐ NO ☐ CITATION # CHARGE



OFFICER'S NAME (PRINT) LT. WESTOVER BADGE OR ID # 240 AGENCY FIFE PD

PAGE 01 OF 4

APPENDIX

Exhibit F - 59

CP 167

Predstina

TIME	(SHERIDAN)	DISP.
	ENGEL, CATHY T.	
	[REDACTED]	
	[REDACTED] 9:30 PM	
	[REDACTED]	
	W/F 5'4, 110, Blon, Blu	
	<u>GLOBAL HX</u>	
	03-3230783 TPD - SHERIDAN	
	part of child who was	
	gone to school.	
	03-0130933 TPD - SUSP	
	child abuse/neglect.	
	04-2963356	
	CHILD NEGLECT - CPS PLACEMENT	
	03-54051 - VANDALISM	
	WITNESS	

070412Z UTC  
5/06/2003 10:44 AM

LAKEWOOD MUNICIPAL COURT  
D O C K E T

PAGE: 5

ATTENDANT  
JUSTICE, MICHAEL LESLIE

CASE: 98-000615 - RP  
Criminal Non-Indict  
Agency No. 981046281

EXT: Continued

U 05/06/2002 Defendant Excluded/Waived for No Contact Order  
U 05/01/2003 PUB RECORDS REQ RECEIVED FROM MORTALE TIMES. PHONED JUSTIN  
MAYO TO CLARIFY REQUEST. COPY OF THE DOCKET TO BE PROVIDED  
TODAY. ADVISED PER LOCAL COURT RULES ON DISSEMINATION FILE  
MAY NOT BE READY TODAY FOR PICK UP.

#### ACCOUNTING SUMMARY

	Total Due	Paid	Credit	Balance
Timepay: N	3,595.00	3,595.00		

#### ADDITIONAL CASE DATA

Case Disposition  
Disposition: Closed Date: 01/08/2002

#### Parties

Attorney DINSTADIE, THOMAS DOUGLAS  
Restitution Recipient CASTALINE, MARSHA

#### Personal Description

Sex: M Race: W DOB: 01/01/1955  
Dr.Lic.No.: [REDACTED] State: WA Expires: 1993  
Employer:  
Height: 6 Weight: 185 Eyes: BLU Hair: BRN

#### Hearing Summary

Held	ARRAIGNMENT	ON 05/19/1998 AT 08:30 AM IN ROOM 1	WITH WAB
Held	PRE TRIAL	ON 06/18/1998 AT 01:00 PM IN ROOM 1	WITH CAL
Held	READINESS HEARING	ON 08/13/1998 AT 01:00 PM IN ROOM 1	WITH CAL
Held	PRE TRIAL	ON 10/01/1998 AT 10:30 AM IN ROOM 1	WITH CAL
Held	RESTITUTION HEARING	ON 12/03/1998 AT 09:00 AM IN ROOM 1	WITH CAL
Held	RESTITUTION HEARING	ON 12/10/1998 AT 09:00 AM IN ROOM 1	WITH CAL
Held	AUDIT REVIEW	ON 01/08/2002 AT 04:00 PM IN ROOM 1	WITH EAH

ad of docket report for this case